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March 15, 2007

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Art Unit 1632

WRITER'S DIRECT NUMBER:

Commissioner for Patents PO Box 1450 Alexandria, VA 22313-1450

Re:

U.S. Utility Patent Application

Appl. No. 10/820,144; Filed: April 8, 2004

For: Systemic Viral/Ligand Gene Delivery System and Gene Therapy

Inventors: CHANG et al.

Our Ref:

2474.0070003/BJD/JKM

Sir:

Transmitted herewith for appropriate action are the following documents:

- 1. Reply to Restriction Requirement and Election of Species; and
- 2. One (1) return postcard.

It is respectfully requested that the attached postcard be stamped with the date of filing of these documents, and that it be returned to our courier. In the event that extensions of time are necessary to prevent abandonment of this patent application, then such extensions of time are hereby petitioned.

The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

Jeffrey K. Mills Agent for Applicants Registration No. 56,413

BJD/JKM:bac Enclosures

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Confirmation No.: 6653

CHANG et al.

Art Unit: 1632

Appl. No.: 10/820,144

Examiner: Chen, S.L.

Filed: April 8, 2004

Atty Docket: 2474.0070003/BJD/JKM

For:

Systemic Viral/Ligand Gene

**Delivery System and Gene Therapy** 

## Reply to Restriction Requirement and Election of Species

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

In reply to the Restriction Requirement dated **February 13, 2007**, Applicants hereby provisionally elect Group I, claims 1-18, 32-36 and 45-61, drawn to a vector for delivery of a virus to a target cell within a host animal comprising a cell-targeting ligand, which is a protein, peptide or hormone, an antibody or antibody fragment, non-covalently bound to said virus, wherein said ligand binds directly to a receptor on said target cell, and a method for preparing said vector. Applicants reserve the right to pursue the non-elected claims in one or more divisional or continuation applications.

In reply to the Election of Species Requirement in the same Office Action, Applicants hereby provisionally elect protein, peptide or hormone. It is respectfully believed that claims 1-18, 32-36 and 45-61 read on the elected species.

Both of the election of Group I and the election of species are made with traverse.

Although the Groups identified in the Restriction Requirement are alleged by the Examiner to be patentably distinct, they are directed to similar, overlapping subject matter. According to M.P.E.P. § 803: "If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." M.P.E.P. § 803 at 800-4.

The subject matter of Groups I-III are clearly related as the groups are directed to vectors and methods for preparing such vectors; methods for targeting delivery of a nucleic acid to cancer cells comprising administering a viral vector; and a method for targeting and sensitizing cancer cells comprising administering a virus. Therefore, searching these groups together would not place a serious burden on the Examiner within the meaning of M.P.E.P § 803.

In view of the comments presented above, Applicants respectfully request reconsideration of the restriction requirement, and that Groups I-III, be examined together.

Furthermore, the subject matter of each allegedly distinct Species is clearly related. Specifically, peptides, hormones, antibodies and antibody fragments are all proteins. The Examiner states that "[a] protein is a single chain molecule that functions as an enzyme." Office Action at page 4, section 2, lines 5-6. Applicants respectfully submit that while an enzyme is an example of a protein, not all proteins are enzymes. In fact, as noted above, examples of proteins include peptides,

hormones, antibodies and antibody fragments. Therefore, searching the two allegedly distinct Species, proteins/peptides/hormones and antibodies/antibody fragments, together would not place a serious burden on the Examiner within the meaning of M.P.E.P Section 803, as a search for "proteins" would necessarily include a search for peptides, hormones, antibodies and antibody fragments.

In view of the comments presented above, Applicants respectfully request reconsideration of the Election of Species requirement, and that the Species identified by the Examiner be examined together.

Finally, in accordance with 37 C.F.R. § 1.1141(a), Applicants reserve the right to claim additional species, and/or to have additional species searched and/or examined, in the event that a generic claim is found to be allowable.

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It is not believed that extensions of time are required beyond those that may otherwise be provided for in documents accompanying this paper. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor are hereby authorized to be charged to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

Jeffrey K. Mills
Agent for Applicants

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Date: March 15, 2007

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